



Legislative Research Council

RULES REVIEW COMMITTEE MINUTES

**Three hundred ninth meeting
Wednesday
November 17, 2010**

**Room 414
State Capitol
Pierre, South Dakota**

The three hundred ninth meeting of the Rules Review Committee was called to order by Chair Representative Roger Hunt at 10:04 a.m. CST, November 17, 2010, in Room 414 at the State Capitol, Pierre, South Dakota and via the Digital Dakota Network (DDN) at the following locations: Northern State University, 1200 S. Jay St., Room Lib 117, Aberdeen, South Dakota; Department of Transportation, 901 Dakota St., Huron, South Dakota; Mitchell Technical Institute, 1800 E. Spruce, Room TC 155, Mitchell, South Dakota; Department of Transportation, 2300 Eglin St., Rapid City, South Dakota; University Center, 2205 Career Ave., Room 282 S, Sioux Falls, South Dakota; and Department of Transportation, 1306 W. 31st St., Yankton, South Dakota.

A quorum was determined with the following members answering the roll call: Senators James Hundstad and Jean Hunhoff (Vice-chair); and Representatives Peggy Gibson, Roger Hunt (Chair), and David Lust. Senator Mike Vehle joined the meeting at 10:06 a.m. All members appeared via the DDN. Staff members present were Doug Decker, Code Counsel, and Kris Schneider, Senior Legislative Secretary.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was recorded by South Dakota Public Broadcasting. The archived recording is available at the LRC website at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

Approval of Minutes

Representative Gibson moved, seconded by Representative Lust, that the minutes of the September 28, 2010, meeting be approved. Motion prevailed on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Rules Reviewed

Bureau of Administration – Amend rules to update statutory citations related to the requirement that certain state publications bear an inscription listing the publisher, the number of copies published, and the approximate cost of publication per copy; and amend rules to update requirements related to the fee for placement on the state bidders list, and to establish specifications and requirements for state government purchases of environmentally preferable products.

Mr. Jeff Holden reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Gibson, to approve the rules proposed by the Bureau of Administration. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Public Safety: 911 Coordination Board – Adopt a rule to establish alternative compliance methods for the requirement contained in ARSD 50:02:04:02 which requires all public safety answering points to be staffed with two 9-1-1 telecommunicators on duty at all times.

Mr. Michael Houdyshell reviewed the background and fiscal note regarding the proposed rule.

Representative Gibson moved, seconded by Senator Vehle, to approve the rule proposed by the Department of Public Safety: 911 Coordination Board. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Health: Board of Dentistry – Amend rules to change from regulating by the modality of the delivery of the sedative or anesthetic to regulating based on the level of sedation; define four levels of sedation – minimal, moderate, deep, and general anesthesia; and require dentists who are not specialists to disclaim as much if they advertise services in a recognized specialty area and places certain requirements on advertising in non-recognized specialty areas.

Ms. Brittany Novotny, Pierre, Executive Secretary, and **Dr. Roger Wilson**, Rapid City, Board Member, reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Lust, to approve the rules proposed by the Department of Health: Board of Dentistry. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Human Services: Division of Rehabilitation Services – Amend Interpreters for the Deaf rules to add a complaint process against a certified interpreter, provide for notice to the interpreter of the complaint, add an investigation process and timeline; will require any interpreter registering with the Division to adhere to the Code of Professional Conduct as adopted by the Registry of Interpreters for the Deaf; allows an interpreter with an EIPA assessment score of 3.5 or higher who has failed to register within 12 months of the renewal date to register under the initial registration process providing they submit the continuing education as required under the annual registration process; combines initial registration for nationally certified interpreters and the interpreters registering with the EIPA assessment score under one rule; combines annual registration for the currently certified South Dakota certified interpreter, an interpreter registering with an EIPA assessment score and a nationally certified interpreter under one rule; changes the due date

of annual registration to August 31 of each year for all interpreters; changes the continuing education contact hours to 80 hours in a four year maintenance cycle for South Dakota certified interpreters or an interpreter registering with an EIPA assessment score; provides for a modified first time cycle for an interpreter registering with an EIPA assessment score and starts all of the currently certified South Dakota interpreter cycles to begin on September 1, 2011; allows for an extension of continuing education maintenance under certain circumstances; amend Cochlear Implants rules to amend the eligibility requirements for funding of cochlear implants by the Division of Rehabilitation Services by removing the current requirement that the applicant must be five years old or if less than 21 have one implant before the age of five or a documented progressive hearing loss that led to deafness after speech and language were developed and by changing the requirement to the applicant be less than 21 years of age at the time of application; amends the application process to reflect that the requirement for deafness after speech and language development is no longer required; and amends the definition of an applicant to reflect the age change to less than 21 years of age.

Mr. Grady Kickul reviewed the proposed rules. Interpreter services were provided by Ms. Julie Paluch.

Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Human Services: Division of Rehabilitation Services. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Environment and Natural Resources: Environmental Services – Adopt rules to implement South Dakota's Regional Haze Program for the two Class I areas (Badlands and Wind Cave National Parks).

Mr. Rick Boddicker and **Mr. Kyrik Rombough** reviewed the proposed rules.

Senator Hundstad moved, seconded by Representative Lust, to approve the rules proposed by the Department of Environment and Natural Resources: Environmental Services. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Social Services: Division of Adult Services and Aging – Adopt Hospice Services rules to add definitions, identify eligibility requirements for providers and recipients, outline covered service limitations, define notice requirements and reimbursement policy, and clarify claim submission requirements.

Ms. Laura Ringling and **Mr. Larry Iverson** reviewed the proposed rules.

Senator Hunhoff moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Social Services: Division of Adult Services and Aging. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Agriculture: South Dakota Value Added Finance Authority – Amend rules to increase the bond amount for the Beginning Farmer Bond Program to purchase agricultural land and make minor changes to the qualification of the program.

Ms. Terri Labrie Baker reviewed the proposed rules.

Senator Vehle moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Agriculture: South Dakota Value Added Finance Authority. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Revenue and Regulation: Division of Insurance – Amend rules to prohibit insurers from discouraging applications for health insurance during open enrollment, revise the standards for internal appeals of health insurance claim determinations, establish standards for the coverage of preventive services in health insurance, require the extension of health insurance coverage for children who have not reached the age of 26, require access to certain health care specialists in health insurance, set standards for health insurance compensation with respect to emergency care, restrict the ability of health insurers to rescind coverage, prohibit the application of annual and lifetime limits in health insurance policies in certain situations, and provide for open enrollment in health insurance for those that have not reached the age of 19.

Mr. Randy Moses reviewed the rules.

Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Revenue and Regulation: Division of Insurance. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Department of Revenue and Regulation: Division of Securities – Amend Broker-Dealer and Agent rules to change the use of NASD to FINRA due to the merger of these two organizations; clarify the series 63 examination lapse of registration; provide for any SEC required fiduciary standards; add senior specific professional designations; and exempt certain business brokers from broker-dealer registration; amend Registration Requirements and Procedures rules to clarify existing rules and exempt certain advertising in public offerings prior to complete registration; amend Investment Adviser rules to repeal all existing rules and replace those with model rules that coordinate with the Uniform Securities Act of 2002 and include the new SEC ADV format; and provide for an exemption to registration for certain investments advisers; and amend Notice Filings for Covered Securities and Registration Exemptions rules to clarify how to calculate the number of purchasers under ARSD 47-31B-202(14) and the use of this same exemption by out of state issuers; and define "isolated non-issuer."

Ms. Erin Menkhaus and **Mr. Gail Sheppick** reviewed the proposed rules.

Representative Hunt moved, seconded by Senator Hunhoff, to approve the rules proposed by the Department of Revenue and Regulation: Division of Securities. Motion prevailed unanimously on a roll call vote with 6 ayes. Members voting aye: Gibson, Hundstad, Hunhoff, Hunt, Lust, and Vehle.

Senator Hunhoff was excused from the meeting at 12:48 p.m.

Department of Revenue and Regulation: Lottery Commission – Amend rules to adopt the latest amended game rules of the Multi-State Lottery Association for the Mega Millions Game, including the Megaplier Special Promotion Game rules, and the Powerball Game, including the Power Play rules, as the rules of the South Dakota Lottery for the games.

Mr. Norm Lingle reviewed the proposed rules.

Representative Gibson moved, seconded by Senator Vehle, to approve the rules proposed by the Department of Revenue and Regulation: Lottery Commission. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Department of Revenue and Regulation: South Dakota Real Estate Commission – Amend rules to permit a licensee to receive advance compensation if the compensation is placed in the broker's trust account until completion of the service performed, authorize the commission to issue consent orders, define auction terms, establish listing requirements, advertising guidelines and procedures when selling real estate at auction, require auctioneers to retain certain records, prohibit auctioneers from performing certain acts, distinguish licensees who are permitted to conduct auctions, and allow an inactive nonresident licensee to renew without filing a certification of licensure from the licensee's resident state.

Ms. Dee Jones Noordermeer reviewed the proposed rules.

Representative Gibson moved, seconded by Representative Lust, to approve the rules proposed by the Department of Revenue and Regulation: South Dakota Real Estate Commission. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Department of Education: Board of Education – Amend rules to provide valid and reliable testing procedures for any school district choosing to write their own end-of-course exams.

Mr. Wade Pogany reviewed the proposed rules.

Senator Hundstad moved, seconded by Representative Gibson, to approve the rules proposed by the Department of Education: Board of Education. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Department of Game, Fish and Parks – Amend License Forms and Fees rules to add a Custer State Park (CSP) "any mountain lion" hunting license and establish the fee for the license at \$300 and increase the fee for a regular statewide mountain lion hunting license from \$10 to \$20; amend a Hunting Requirements and Prohibited Methods rule to remove the prohibition against using dogs and electronic calls when hunting mountain lions; amend CSP Restrictions rules to establish an eligibility requirement prohibiting a person who received a CSP "any mountain lion" license in any of the preceding nine years from applying for a license for the current CSP mountain lion season; and amend Mountain Lion Hunting Season rules to establish season dates, open area, harvest limits, requirements and restrictions, number of resident licenses available, and increase the total mountain lion harvest limit outside of CSP from 40 to 45 mountain lions and increase the female harvest limit outside of CSP from 25 to 30 female mountain lions; limit residents to one mountain lion hunting license per year; and transfer language pertaining to the use of electronic calls in hunting mountain lions contained in the current mountain lion hunting season rule to the Hunting Requirements and Prohibited Methods Chapter; establish a new mountain lion hunting season within the fenced boundaries of CSP to take place from January 1 through March 31 of each year; establish the number of licenses available to state residents at 5 at a cost per license of \$300; and provide for other restrictions for the CSP mountain lion hunting license.

Mr. Tony Leif reviewed the proposed rules. He noted that the Game, Fish and Parks Commission decided to not allow the use of dogs when hunting mountain lions and the number of resident licenses and the cost per license for the CSP mountain lion season was changed.

Senator Hundstad moved, seconded by Representative Hunt, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 5 ayes, 1 excused. Members voting aye: Gibson, Hundstad, Hunt, Lust, and Vehle. Member excused: Hunhoff.

Representative Lust was excused from the meeting at 1:35 p.m.

Department of Game, Fish and Parks – Amend a Park Licenses rule to eliminate the Custer State Park "per person" temporary park entrance license and extend the Custer State Park temporary motorcycle park entrance license valid during the Sturgis Motorcycle Rally into a year round license; amend Camping Permits and Rules to increase the daily camping fee in all state park area campgrounds by \$2; increase park lodge fees by \$25; increase the fee to reserve a group picnic shelter from \$9 to \$20; and change the campground designation at West Bend and Randall Creek from modern to preferred based on campground occupancy rates; amend General Provisions (Fishing Seasons and Methods) rules to update the definition of the "Black Hills Trout Management Area;" add a nonresident youth fishing license and game fish spearing and archery certification permit and establish the fee for each; standardize ice fishing shelter removal dates statewide by aligning the date with the end of the spearing season; and authorize liberalized taking of lake herring along with smelt in the Missouri River and its impoundments and transfer this rule from the chapter on fish limits to the general provisions chapter; amend Fish Limits rules to standardize panfish limits statewide; change daily and possession limits for yellow perch on South

Dakota-Minnesota boundary waters to be consistent with South Dakota inland water changes and Minnesota border water regulations; and transfer the rule authorizing liberalized take of smelt from the fish limits rule to the general provisions rule and remove the rule which establishes special management waters for panfish; amend Spearing rules to change spearing dates for rough fish to allow spearing year round; change spearing dates for rough fish in South Dakota-Minnesota boundary waters to any time of the day or night from May 1 to the last Sunday in February, inclusive; and repeal the special rule pertaining to spearing of rough fish in certain northeastern South Dakota counties; amend a Hoop Nets and Setlines rule to remove toads as authorized bait for setlines and make leopard frogs the only authorized species of frogs that may be used as bait on tagged setlines; amend Bait rules to change the expiration date for bait dealer licenses to January 31 of the calendar year directly following the year for which the license was issued; add Interstate Lake to the list of waters closed to commercial taking of bait; and establish the physical location where bait dealers are required to keep their bait records available for inspection by department personnel; and amend Private Fish Hatcheries rules to add language giving the department flexibility to exempt newly created waters under private fish hatchery licenses from payment of the one-time inspection fee; change the expiration date for private hatchery licenses to January 31 of the calendar year directly following the year for which the license was issued; establish the physical location where private hatchery licenses are required to keep their hatchery records available for inspection by department personnel; and add rule language which specifies when payments are due for fish health inspections.

Mr. Doug Hofer and Mr. Leif reviewed the proposed rules.

Representative Hunt moved, seconded by Senator Hundstad, to approve the rules proposed by the Department of Game, Fish and Parks. Motion prevailed on a roll call vote with 4 ayes, 2 excused. Members voting aye: Gibson, Hundstad, Hunt, and Vehle. Members excused: Hunhoff and Lust.

Draft Legislation/Staff Report

Mr. Doug Decker commented that the agenda item concerning draft legislation was included to provide an opportunity for legislators to offer any changes to the proposed draft.

Next Meeting

The next meeting of the Interim Rules Review Committee will be held on Monday, December 20, 2010.

Adjournment

Representative Gibson moved, seconded by Senator Vehle, that the meeting be adjourned. Motion prevailed on a voice vote.

Chair Hunt adjourned the meeting at 2:12 p.m.



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